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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/322,666 05/28/99 FUGLEVAND F.E.

W WA23-015

021567 IM52/0827  
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SUITE 1300  
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EXAMINER

KALAEIT, S.

ART UNIT

PAPER NUMBER

1745

DATE MAILED:

08/27/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No. 09/022646

Applicant(s)

EGGLEVAND ET AL

Examiner

KALAFET

Group Art Unit

1745

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 6/18/01, 7/6/01, 7/24/01
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-7, 9-34, 37-53, 56-65, 67-70, 73-115, 117-161, 164-193, 195-249, 246-316 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) See BODY OF ACTION is/are allowed.
- ☒ Claim(s) 168-180 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10, 15, 17
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The request filed on 6/18/01 for a Request for Continued Examination Application (RCE) under 37 CFR 1.114 based on parent Application No. 09/322,666 is acceptable and a RCE has been established. An action on the RCE follows.
2. Claims 168-180 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is not antecedent for "the air" in line 6 of claim 168. The only reference to "air" is in the line immediately thereafter. Switching the order of the steps "monitoring the temperature of the air" and "directing air to the at least one fuel cell" is suggested. Claims 169-180 depend on claim 168, and are thus also considered indefinite.
3. Claims 1-7, 9-34, 37-53, 56-65, 67-70, 73-115, 117-161, 181-193, 195-244 and 246-316 are allowed. Claims 59-65 and 67 recite the subject matter of former claim 66, objected to as containing allowable subject matter in paper no. 9. Claims 159-161, 164-167, 191-193 and 196-199 recite the deactivation of at least one fuel cell, incorporated from former claims 163 and 195, also previously objected to as containing allowable subject matter. New claims 311-316 recite the plurality of distributed controllers; the selective deactivation of individual fuel cells within a stack thereof; or a system with a fuel cell, a battery and a controller, where the controller is supplied with electricity from the battery it controls. These features are considered to render the claims allowable because they are not disclosed by the prior art of record, as stated in paper no. 9, paragraph no. 3. The other claims are listed as allowable for reasons stated in paper nos. 4 and 9. The newly submitted prior art has been considered, but none of the references therein are seen as

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disclosing of rendering obvious the present claims. Early *et al.* (US 4961151) discloses a system with a battery, a fuel cell and a controller, but do not indicated that the controller is supplied with power from the battery. Herron (US 6,242,120) discloses a fuel cell system with means for controlling a purge cycle, while Hauer (US 6,214,484) discloses a system in which a fuel cell is controlled in response to the state of charge of a battery used therewith, but these patents are not issued early enough to be available as prior art, even if Hauer is awarded the filing date of its PCT parent, filed in Europe.

4. Claims 168-180, for reasons of record, would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action. See paper no. 4, paragraph no. 20.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Steve Kalafut whose telephone number is (703) 308-0433.



sjk

STEVE KALAFUT  
PRIMARY EXAMINER  
GROUP 1700

August 20, 2001